



E-COMMERCE: SIGNATURES

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Signatures play an important role in the approval of a document and the verification of the person that approves the content of the document. A signature gives certain attributes to a document and creates a rebuttable presumption that the document is original, that all the parties signing the document agree to the content and that the document is legally binding in law.¹

The formality requirements include signatures. The point of departure in our law with regards to formality requirements is that no formalities are required for a legally binding contract. There are certain exceptions to this statement, but these exceptions are not relevant to the subject under discussion. The focus will be on signatures required by parties by law and how to sign a document by way of electronic means.

Doing business by way of electronic communication makes the authentication thereof complicated. The verification of the author is therefore crucial. Where agreements are manually signed in the presence of a party, the identification of the signatory is easy to establish. Any data message now can be seen as “in writing” and therefore be signed by

¹ DP van der Merwe, A Roos, T Pistorius, GTS Eiselen & SS Nel *Information and Communications Technology Law* 2nd ed (2016) 176-179.

way of electronic means.² The problems that occur now are applying signatures onto documents sent by phone or computer without downloading an app or scanning it in; What constitutes a signature?; Is an original signature essential to conclude a valid binding agreement between parties?; Is an electronically signed document regarded as an original document? The following discussion will hopefully give more clarification about the concerns that may arise.

According to section 13 of the Electronic Communication and Transaction Act (“ECTA”)³ provision is made for two types of signatures: An advanced electronic signature⁴ and a data message signature⁵. Where legislation requires a signature, an advanced electronic signature is a requirement. Furthermore, it must meet all the requirements set out in ECTA.⁶ Where parties have agreed to a term contained in the document that it must be signed without indicating the type of signature, a data message will be sufficient proof of signature.

A data message must meet the following requirements: firstly, the method used must identify the signatory and indicate the approval of the content. The data message must therefore be linked to a specific person and the message must indicate that the specific person is in agreement with the content of the document signed. Secondly the method used must be appropriate for the purpose and it must be reliable. All the surrounding circumstances must be taken into account in case of this requirement. The second requirement is widely structured and the surrounding circumstances will play a big role. All the necessary steps should thus be taken to ensure that the contacting parties have certainty.

With the above in mind, it is clear that a document can be regarded as signed electronically by only typing in your name in the same space provided for signature. As long as the intention is to sign the document to show you agree with the content and the

² HJ Janse van Rensburg *E-Commerce: Legal recognition “in writing”* (2020) 1-2.

³ Act 25 of 2002.

⁴ Section 13(1) of ECTA.

⁵ Section 13(3) of ECTA.

⁶ “Advanced electronic signature” means an electronic signature which results from a process which has been accredited by the Authority as provided for in section 37.

signature can be linked to a specific person, the document will be original and have the same legal force as a manually signed document.⁷

The analysis of the *Spring Forest Trading 599 CC v Wilberry (Pty) Ltd* (“*Spring Forest*”)⁸ case is authority of the above interpretation of the requirements mentioned in section 13(3)(a) and (b) of ECTA. In an article written by Y Mupangavanhu⁹, the *Spring Forest* matter was considered and supported. The author came to the conclusion that any data message can be seen as a signature if the requirements are met, even a person’s name typed at the end of an e-mail.

ECTA therefore gives us security to use electronic means to conclude agreements and ensure us that any agreement concluded by way of a data message will not be without legal effect or force merely because it only contains electronic data and no traditional signature.¹⁰

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⁷ Section 13(2) and section 14 of ECTA.

⁸ 2015 (2) SA 118 SCA par 18.

⁹ Y Mupangavanhu “Electronic signatures and non-variation clauses in the modern digital world: The case of South Arica” (2016) 133 *SALJ* 853 869.

¹⁰ Section 22(1) of ECTA.